



INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

August 13, 2012

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: *Ex Parte* Communication: WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 97-21; GN Docket No. 09-51**

Dear Ms. Dortch:

On August 9, 2012, Genevieve Morelli, President of the Independent Telephone & Telecommunications Alliance (“ITTA”); Melissa Newman, Vice President – Federal Regulatory Affairs of CenturyLink; and the undersigned met with Angie Kronenberg, wireline legal advisor to Commissioner Clyburn, to discuss ITTA’s positions in the above-referenced proceedings relating to the wholesale/resale certification process and the time period for amending a carrier’s FCC Form 499 when it would result in decreased Universal Service Fund (“USF” or the “Fund”) contribution liability.

#### ***Wholesale/Resale Certification Process***

There is general consensus within the industry that the current wholesale/resale certification process is not working.<sup>1</sup> Not only is it administratively burdensome for wholesale carriers, it also creates incentives for resale customers to provide inaccurate certifications to avoid USF line item charges. In addition, there is longstanding uncertainty and confusion regarding wholesale carriers’ obligations when it is later determined that resale provider revenues were incorrectly categorized, as noted in the pending petition filed by AT&T, CenturyLink, SureWest, and Verizon<sup>2</sup> seeking clarification in connection with the Wireline Competition Bureau’s (“Bureau’s”) *TelePacific Order*.<sup>3</sup>

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<sup>1</sup> See, e.g., Letters from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 06-122 (filed Aug. 6, 2012); Letter from Mary C. Albert, COMPTel, to Marlene H. Dortch, FCC, WC Docket No. 06-122 (filed Aug. 1, 2012).

<sup>2</sup> *In the Matter of Request for Review of a Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. Telepacific d/b/a Telepacific Communications*, Petition for

The Commission's Further Notice of Proposed Rulemaking seeking input on comprehensive reform of the USF contributions system ("Contributions Reform FNPRM") acknowledges problems with the current wholesale/resale certification process and asks for comment on a replacement system.<sup>4</sup> As set forth in its reply comments in this proceeding, ITTA endorses Cincinnati Bell's reform proposal. Cincinnati Bell's proposal constitutes the simplest solution to eliminate the burdens associated with the Commission's current wholesale-resale certification requirements and would provide greater certainty to contributors and USAC.<sup>5</sup> Under Cincinnati Bell's approach, the resale customer would provide the wholesale carrier with its Form 499 ID and the wholesale carrier would check this against the Form 499 Filer ID database to identify whether the resale customer is in fact a contributor. If the ID database indicates that that reseller contributes to the Fund, the wholesale carrier is not obligated to contribute on the basis of the telecommunications it sells to the reseller. It is the reseller's responsibility to contribute to the Fund on an accurate basis.

The approach that the Commission proposes in the Contributions Reform FNPRM – *i.e.*, to require service-specific certifications – presents a number of practical problems.<sup>6</sup> Among other things, it would be incredibly time-consuming and burdensome for carriers to implement as they would likely have to track and report on a circuit-specific basis, which would require extensive changes to current ordering, billing, and reporting systems. Moreover, it would necessitate myriad changes to "fix" a short-term problem that would largely disappear should the Commission require broadband Internet access services to contribute to the Fund.

If the Commission nevertheless decides to adopt the approach suggested in the Contributions Reform FNPRM, it must give carriers sufficient time to adopt the new system and specific guidance on how to implement it to avoid uncertainty and confusion.

At a minimum, the Commission should grant the petition filed by AT&T, CenturyLink, SureWest, and Verizon and clarify that wholesale carriers are not required to restate revenues or incur liability if it is later discovered that a resale customer has misreported its contribution obligations or that its certification is invalid.

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Clarification or in the Alternative for Partial Reconsideration of AT&T Inc., CenturyLink, SureWest Communications, and Verizon, WC Docket No. 06-122 (filed June 1, 2010).

<sup>3</sup> *In the Matter of Request for Review of a Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. Telepacific d/b/a Telepacific Communications*, Order, WC Docket No. 06-122 (rel. Apr. 30, 2010).

<sup>4</sup> *In the Matter of Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket Nos. 06-122, GN Docket No. 09-51, ¶ 143 (rel. April 30, 2012) ("Contributions Reform FNPRM").

<sup>5</sup> Reply Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 06-122, *et al.* (filed Aug. 3, 2012) ("ITTA Reply Comments").

<sup>6</sup> Contributions Reform FNPRM at ¶ 168.

***Revenue Restatements to FCC Form 499***

ITTA also discussed its concerns with the current process for amendments to FCC Form 499 when it is necessary for carriers to restate their revenues to report decreased contribution obligations. This issue has been pending since early 2005 when several applications for review<sup>7</sup> of a December 2004 Bureau order<sup>8</sup> changing the rule governing revisions to Form 499 Worksheets was adopted without opportunity for notice and comment. Pursuant to the Bureau order, the deadline for filing revisions that would decrease a carrier's USF obligation was set at 12 months from the original filing deadline. However, the open-ended deadline for filing revisions that would increase a carrier's USF obligation was not affected by the Bureau order.

As ITTA explained in its reply comments in response to the Contributions Reform FNPRM, a 12-month period for amendments that would decrease USF contribution liability is too short.<sup>9</sup> There are often very good reasons why a provider cannot meet the one-year deadline for amending its Form 499. Among other things, government agencies (*e.g.*, state PUCs, taxing authorities) and auditors may make decisions that require restatements beyond one year. Furthermore, prohibiting revisions that would prevent the contribution by a carrier of an erroneous amount is inconsistent with the Section 254 requirement that contributions be "equitable and nondiscriminatory."<sup>10</sup> It goes against traditional notions of equity and fairness that providers have an ongoing obligation to update their forms when they would incur increased contribution liability, but are only provided one year in which to modify their forms when they would be entitled to a refund.

In addition, the 12-month rule creates a perverse incentive for carriers to understate revenues if they believe it will turn out that their revenues are lower but they will no longer have an opportunity to recoup overpayment to the USF because that determination is made beyond the

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<sup>7</sup> See, *e.g.*, *In the Matter of Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Changes to the Board of Directors of the National Exchange Carrier Association, Application for Review of Action Taken Pursuant to Delegated Authority of SBC Communications Inc.*, CC Docket Nos. 96-45, 98-171, 97-21 (filed June 10, 2005).

<sup>8</sup> *In the Matter of Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Changes to the Board of Directors of the National Exchange Carrier Association*, Order, CC Docket Nos. 96-45, 98-171, 97-21 (rel. Dec. 9, 2004) ("Order").

<sup>9</sup> ITTA Reply Comments at 7.

<sup>10</sup> 47 U.S.C. § 254.

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one-year deadline. Finally, the 12-month rule has not resulted in significantly greater stability or administrative efficiency for carriers, USAC, or the Commission as intended by the Bureau when it adopted this change.<sup>11</sup>

The Commission should reverse the Bureau's decision to reject as untimely any revisions to a carrier's FCC Form 499 that would result in decreased contribution liability if not submitted within 12 months of the due date of the original filing. Rather, the Commission should adopt a rule setting symmetrical time periods that allow carriers a reasonable opportunity to file amendments to FCC Form 499 for purposes of reporting increased or decreased contribution liability.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,



Micah M. Caldwell  
Vice President, Regulatory Affairs

cc: Angie Kronenberg

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<sup>11</sup> Order at ¶ 2.